

APR 11 2005UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION_____
IN RE:

CASE NO. 04-74482

Christine Hunt Webb,

CHAPTER 13

Debtor.

JUDGE MASSEY
_____ORDER ON DEBTOR'S APPLICATION TO EMPLOY

Debtor in this Chapter 13 case seeks to employ Jon-Rene K. Glover of the firm of McAllister & Glover as "Child Custody Counsel." The application, including attachments, alleges that the professional does not hold or represent an interest adverse to the estate and is a disinterested person under 11 U.S.C. § 327(a). It does not rule out the possibility that one aspect of the litigation for which counsel is to be employed is to collect on a claim that is property of the estate because it states that Debtor and Glover understand that "any settlement of Debtor's claim is subject to [court] approval." The question this application raises is whether a Chapter 13 debtor must obtain court approval to hire a lawyer to represent the debtor in a domestic relations dispute.

Section 327 requires that a trustee obtain court approval to employ an attorney or other professional. The Bankruptcy Code contains no provision requiring court approval of bankruptcy counsel of a Chapter 13 debtor. *In re Powell*, 314 B.R. 567, 569 (Bankr. N.D.Tex. 2004) ("A Chapter 13 debtor does not need court authorization to employ an attorney.") Similarly, a debtor in a Chapter 7 or Chapter 11 case may employ counsel without court approval. But a Chapter 11 debtor in possession, like a trustee, must obtain court approval to employ counsel because the

debtor in possession exercises powers of a trustee. 11 U.S.C. § 1107. This suggests that a Chapter 13 debtor is required to obtain court approval of counsel employed to assist the debtor where the debtor is exercising the powers of a trustee.

Section 1303, which addresses the “rights and powers” of a debtor, provides: “[s]ubject to any limitations on a trustee under this chapter, the debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l), of this title.” Section 363(b) permits a trustee to use property of the estate other than in the ordinary course of business if authorized by the court. A trustee under Chapter 13 is limited in her ability to employ an attorney (other than a full-time staff attorney) by section 330, requiring court approval of such employment.

For Chapter 13 debtors not engaged in a business, litigation of a claim that is property of the estate will always be outside the ordinary course of business. Suing on a claim or cause of action that is property of the estate constitutes use of such estate property. A trustee is not required, however, to obtain court approval to sue on a claim that is property of the estate, 11 U.S.C. § 323(b), and neither is a Chapter 13 debtor. If this analysis is correct, it would follow that the court must approve the employment of the Chapter 13 debtor’s attorney to pursue claims that are property of the estate.

An attorney representing a Chapter 13 debtor must file a fee application to get paid from property of the estate, as set forth in section 330(a)(4)(B) of the Bankruptcy Code, which provides:

(B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor’s attorney for representing the interests of the

debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(a)(4)(B).

The reference in this section to “the debtor’s attorney” refers to the attorney for the debtor seeking compensation and does not mean that a Chapter 13 debtor is entitled to have only one attorney. A debtor’s current income is property of the estate, and, as provided in confirmation orders currently used in this district, a debtor’s current income remains property of the estate throughout the case.

If, as here, a Chapter 13 debtor wishes to employ a professional for a matter not involving estate property, no court approval is necessary to employ counsel. A Chapter 13 debtor may not, however, pay such counsel from estate property without court approval. Under the fee contract attached to the application, Ms. Webb had to make an initial fee deposit of \$3,500.00, but the application to employ does not reveal whether Debtor is to be the source for payment of the retainer. Counsel for Debtor informed the Court and counsel for the Trustee in a telephone conference on April 8, 2005 that Debtor’s family provided those funds. If so, McAllister & Glover need not file a fee application with respect to the retainer. But Debtor may not pay McAllister & Glover additional fees from estate property, including from her current income, without an order authorizing her to do so.

The Court recognizes that Debtor probably is trying to obtain custody of her child or to resist having to give up custody of her child. Some undertakings and relationships in life cannot be valued in dollars and cents. Protecting one’s child is such an undertaking and relationship, and paying what it takes to provide such protection often requires sacrifice. Hence, the immediate

needs of a child may easily trump other long-term goals involving financial affairs. It may nonetheless be prudent to consider the effect of employing a professional on the viability of the bankruptcy case.

Based on this analysis, it is

ORDERED that Debtor's application to employ "Child Custody Counsel" (document no. 12) is granted to the extent necessary. The Clerk is directed to serve this Order on Debtor, Debtor's bankruptcy counsel, Jon-Rene Glover at the address shown on the second page of document no. 12 and the Chapter 13 Trustee.

Dated: April 8, 2005.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE